

REMARKS

Status of Application

Claims 19-28 constitute all currently pending claims in the application. Claims 1-18 are canceled. Claims 19-28 are newly added. Applicant respectfully submits that new claims 19-28 are sufficiently supported by the present disclosure, and add no impermissible new matter. For example, support may be found in the Specification at page 36, lines 5-13.

Objection to the Specification

The Examiner objects to the specification allegedly because it is unclear and contains improper and unidiomatic English. Applicant maintains its contention that the as-filed specification is in compliance with 37 C.F.R. §§ 1.52(a) and (b). Applicant again emphasizes that 37 C.F.R. § 1.52(b)(ii) requires the application to be in the English language; Applicant submits that the as-filed specification meets these requirements, and is written in English which clearly and sufficiently discloses the present invention.

However, Applicant will again review the specification in good faith, and as discussed in the Interview of April 3, 2007, may file a supplementary amendment including a replacement specification if certain portions of the specification may be further improved by specific amendments. As stated above, however, Applicant continues to maintain that the present specification is in compliance with all statutory and regulatory requirements, and that the Examiner is holding Applicant to a higher standard than that which is required. Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to the specification.

Claim Rejections Under 35 U.S.C. § 112

Claims 1-18 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Claims 1-18 are cancelled, rendering this rejection moot. Applicant herein presents new claims 19-28, and submits that these new claims are not indefinite. Accordingly, Applicant respectfully requests that the Examiner withdraw this rejection.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-18 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Herz et al. (U.S. Patent No. 5,758,257). Claims 1-18 are cancelled, rendering this rejection moot. Applicant herein presents new claims 19-28, and submits that these new claims are not anticipated by Herz, for at least the following reasons.

Claim 19 requires “a sub-storage section that stores information regarding a number of plays of the pieces of music, in one-to-one correspondence with the plurality of pieces of music” and “an interface outputting at least a portion of the plurality of pieces of music to a terminal capable of playing the plurality of pieces of music, the interface receiving updated information from the terminal.”

The Examiner cites col. 6, lines 36-66 of Herz, regarding its teaching of a “customer profile” and “customer preferences.” This portion of Herz, however, fails to teach or suggest “receiving updated information from the terminal” wherein the “information regarding the number of plays . . . is updated in accordance with the received updated information.” Herz at col. 6, lines 57-63, describes “polling the set top multimedia terminals of all customers to

retrieve the records of the video programs actually watched by the customers at each customer location.”

First, it is clear that this portion of Herz describes a system only directed to “video programs,” and not including “pieces of music.” As such, Herz fails to disclose this requirement of claim 19.

Second, although the cited portion of Herz describes “polling . . . to retrieve the records of the video programs actually watched,” it fails to disclose the specific requirement of claim 19 that “information regarding the number of plays . . . is updated in accordance with the received updated information.” The disclosure of Herz merely suggests that the “records of the video programs actually watched” indicate whether or not particular programs are watched, and fail to disclose that such records include “information regarding the number of plays,” or that “information regarding the number of plays” is updated on the server, as required by claim 19.

Moreover, although Herz at col. 3, lines 60-67 describes “the Strubbe system, [in which] the customer specifies whether he or she ‘likes’ a particular video program and the database is updated accordingly,” this merely appears to disclose a customer preference indicating “like” or not indicating “like” for a particular video program, and does not disclose that “information regarding the number of plays . . . is updated.”

As independent claims 22, 25, and 26 recite matter limitations not taught or suggested by Herz. Accordingly, Applicant respectfully submits that claims 19-28 are not anticipated by Herz.

Double Patenting Rejection

Claim 1 has been rejected under the judicially created doctrine of double patenting over claim 1 of U.S. Patent No. 6,831,798 to Hayashi (“Hayashi”). Claim 1 is hereby canceled, rendering this rejection moot.

Applicant herein presents new claims 19-28, and submits that these new claims are not disclosed or suggested by Hayashi. For example, claim 1 of Hayashi fails to teach or suggest “an interface outputting at least a portion of the plurality of pieces of music to a terminal capable of playing the plurality of pieces of music, the interface receiving updated information from the terminal,” as required by claim 19. Moreover, independent claims 22, 25, and 26 recite similar limitations not taught or suggested by claim 1 of Hayashi. Accordingly, Applicant respectfully submits that claims 19-28 are not anticipated or otherwise rendered unpatentable by claim 1 of Hayashi.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

Applicant herewith petitions the Director of the USPTO to extend the time for reply to the above-identified Office Action for an appropriate length of time if necessary. Unless a check is attached, any fee due under 37 U.S.C. § 1.17(a) is being paid via the USPTO Electronic Filing System (EFS). The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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